UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF: San Jacinto Waste Pits Superfund Site, Harris County, Texas International Paper Company, McGinnes Industrial Maintenance Corporation, Respondents Proceeding Under Sections 104, 107, and 122 of the Comprehensive, Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN**

DRAFT ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and International Paper Company ("IPC") and, McGinnes Industrial Maintenance Corporation ("MIMC"). This Settlement provides for the performance by IPC and MIMC (collectively, "Respondents") of a Remedial Design ("RD") and the payment of certain response costs incurred by the United States at or in connection with the "San Jacinto River Waste Pits Site" (the "Site") generally located on the west bank of the San Jacinto River in Harris County, Texas, east of the city of Houston, between two unincorporated areas known as Channelview and Highlands. Other parties were noticed by EPA as potentially responsible parties at the Site (including Musgrove Towing Service, Inc., New Lost River, LLC and MegaSands Enterprises, Inc.) but are not participating in performing the RD.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 6 to the Director of the Superfund Division by EPA Delegation Nos. R6-14-14C and R6-14-14D on January 17, 2017.

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration on _____, 20__ of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement.

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings (including those for personal injuries and property damage alleged by third parties in any state or federal court), other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents each agree to comply with and be bound by the terms of this Settlement and further each agree that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondents and their successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not

limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

7. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Work, and shall condition all contracts entered into under this Settlement on performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access is needed to perform the RD, which may include, but is not limited to, the following properties as depicted on the figures in Appendix C [need copy of Appendix C]: the Sand Separation Area, the Northern Impoundments, parcels located within the area comprising the Southern Impoundment (as defined below), the Texas Department of Transportation ("TxDOT") right-of-way, and the Special Permit Area.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXVI.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), ¶ 60 (Work Takeover), ¶ 15 (Emergencies and Releases), ¶ 82 (Access to Financial Assurance), ¶ 16 (Community Involvement Plan (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs shall also include all Interim Response Costs. Future Response Costs do not include any costs for which EPA has sought reimbursement as Future Response Costs under the terms of that certain Settlement Agreement and Order on Consent for Time-Critical Removal Action for the Site, U.S. EPA Region 6 CERCLA Docket No. 06-12-10 ("TCRA AOC").

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs: (a) paid by the United States in connection with the RD for the Site between December 7, 2017, and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Property Owner" shall mean any person, other than a Respondent, that owns or controls or is claimed to own or control any Affected Property, including but not limited to , the heirs of Mr. Virgil McGinnes, the Port of Houston Authority, TxDOT and San Jacinto River Fleet, LLC ("SJRF"). The clause "Property Owner's Affected Property" means Affected Property owned or controlled by a Property Owner.

"Paragraph" or "¶" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on October 11, 2017 by the Administrator of EPA, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" or "RA" shall mean the remedial action selected in the ROD.

"Remedial Design" or "RD" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the RA as stated in the SOW.

"Respondents" shall mean those Parties identified in Appendix D.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIV (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site," for purposes of this AOC, shall mean the San Jacinto River Waste Pits Superfund Site, including both Northern Impoundments and the Southern Impoundment (as those terms are defined below), located in Harris County, Texas, east of the city of Houston, between two unincorporated areas known as Channelview and Highlands. The Site consists of impoundments for the disposal of solid and liquid pulp and paper mill wastes, and the surrounding areas containing sediments and soils impacted by waste materials disposed in the impoundments. The Northern Impoundments, encompassing approximately 14 acres in size, are located on a partially submerged 20-acre parcel on the western bank of the San Jacinto River, immediately north of the I-10 bridge over the San Jacinto River, and the Southern Impoundment, less than 20 acres in size, is located on a peninsula that extends south of I-10. The Site's location is depicted generally on the map attached as Appendix C.

"San Jacinto River Waste Pits Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket No. 06-12-10, dated May 11, 2010.

"San Jacinto River Waste Pits Future Response Costs Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and ¶ 33.a (Prepayment of Future Response Costs).

"State" shall mean the State of Texas.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to implement the RD, which is attached as Appendix B.

"Supervising Contractor" shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement as set forth and defined by the SOW, except those required by Section X (Record Retention).

IV. FINDINGS OF FACT

10. Based on available information and investigation, EPA has found:

a. The San Jacinto River Waste Pits Superfund Site, generally depicted in Appendix C, is located in Harris County in the State of Texas. The Site consists of impoundments for the disposal of solid and liquid pulp and paper mill wastes, and the surrounding areas containing sediments and soils impacted by waste materials disposed of in the impoundments. The Site is east of the City of Houston where the Interstate Highway 10 Bridge crosses over the San Jacinto River, between two unincorporated areas known as Channelview and Highlands. The Site includes the Northern Impoundments, an area of the San Jacinto River bottom (i.e., river sediment that is contaminated with certain hazardous substances from released waste material), the Sand Separation Area, and the Southern Impoundment.

b. The Northern Impoundments, encompassing approximately 14 acres in size, are located on a partially submerged 20-acre parcel on the western bank of the San Jacinto River. The Southern Impoundment, less than 20 acres in size, is located on a peninsula that extends south of I-10. The upland Sand Separation Area is where sand was separated from the

rest of the dredged material during sand mining and is located west of the Northern Impoundments.

c. The oldest aerial photo that contains evidence of the construction of berms for the Southern Impoundment is from 1964. Ole Peterson Construction Co., Inc. disposed of paper mill waste from Champion Papers, Inc. ("Champion") in the Southern Impoundment. An April 29, 1965 agreement between Champion and Ole Peterson Construction provides for the removal and barge transportation of pulp and paper mill waste from the Champion Pasadena plant for disposal. A Texas State Department of Health ("TDH") interoffice memorandum dated May 6, 1966, states that Champion waste was disposed of beginning in June 1965 by Ole Peterson, "with [MIMC] taking over the disposal operation in September 1965." The memorandum describes the older location for disposal as being on the south side of Highway 73 (now Interstate Highway 10) and as appearing to "consist of a pond covering between 15 and 20 acres." The memorandum states that the older pond on the south side was used prior to MIMC taking over the waste disposal activities.

d. MIMC was incorporated on August 31, 1965. Ten days later, MIMC was assigned the waste disposal contract for waste from the Champion paper mill in Pasadena. MIMC removed waste materials from the Champion Pasadena plant, transported the paper waste materials by MIMC barges, and deposited the waste into the Northern Impoundments, consisting of two ponds surrounded by levees, from September 13, 1965, through May 6, 1966. On December 27, 1965, the Harris County Health Department ("HCHD") observed liquid being pumped out of one of the Northern Impoundment ponds directly into the San Jacinto River. On December 28, 1965, the HCHD sent a letter to MIMC, with a copy to Champion, stating that an alleged discharge of "black liquor" from the waste ponds into the San Jacinto River should be stopped. In addition, the HCHD letter stated that the levees surrounding the wastes ponds should be repaired.

e. The TDH noted in the May 6, 1966 memorandum referenced above that during an April 1966 inspection, levees on one of the two ponds located on the north side of the highway "to be in good shape, with possibly slight seepage," while the second pond needed "additional work on the levees." In addition, the TDH memorandum noted that "the river is not subject to flooding which might wash out the levees . . . from rainfall without the aid of a storm such as [Hurricane] Carla" and that in such an event, "the disposal area might well be covered with water." It also noted that the waste material "appears to solidify rapidly" and "there would be no danger of pollution from seepage."

f. On July 29, 1966, the Texas Water Pollution Control Board granted MIMC permission to release a combination of stabilized waste water and rain water from the Southern Impoundment into the "Old River." It was also noted that the Southern Impoundment would no longer be used for the storage of waste material. A subsequent August 5, 1966 Texas Water Pollution Control Board Interoffice Memo noted that no discharge occurred under this authorization.

g. On August 19, 1968, MIMC minutes indicated that the Board of Directors for MIMC met and voted that the real property on which the Northern Impoundments are located

be abandoned. The MIMC minutes stated that the property was used during fiscal year 1966 and part of fiscal year of 1967 as a dump for waste materials hauled by MIMC.

h. According to Champion's business records, Champion's Pasadena paper mill produced pulp and paper using chlorine as a bleaching agent. These processes used various forms of chlorine, including liquid chloride, aluminum chloride, and sodium chlorate. The pulp bleaching process forms polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans as a by-product and those by-products are found in the paper mill sludge generated from this process.

i. Currently, record title to the tract on which the Northern Impoundments are located is in the name of "Virgil C. McGinnes, Trustee." Virgil McGinnes is deceased, but was the officer, director, and major shareholder of MIMC during the time hazardous substances were disposed at the Site. The Southern Impoundment is located on tracts currently owned by Musgrove Towing Service, Inc. and New Lost River, LLC.

j. Physical changes within the Site in the 1970s and 1980s, including regional subsidence of land in the area due to large scale groundwater extraction and sand mining within the river and marsh to the west of the Northern Impoundments, resulted in partial submergence of the Northern Impoundments and exposure of the contents of the Northern Impoundments to surface waters. During the mid- to late 1990s, permitted dredging by MegaSand Enterprises pursuant to a permit issued to Houston International Terminals, Inc. occurred on property that was then owned by Big Star Barge and Boat Company, Inc. ("Big Star") and in the vicinity of the perimeter berm at the northwest corner of the Northern Impoundments. Aerial photographs indicate the presence of dredge cuts into the Northern Impoundments. The Sand Separation Area, which was formerly owned by Big Star and now owned by the SJRF and used by MegaSand as part of its operations to dredge and sell sand, has the highest levels of dioxin contamination outside of the Northern Impoundments themselves.

k. The primary hazardous substances documented at the Site are polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans. Dioxin concentrations as high as 41,300 parts per trillion have been found in soil and sediment samples collected from the Northern Impoundments and from river sediments near the Northern Impoundments. Sediments contaminated with high levels of dioxin have been found in the San Jacinto River both upstream and downstream from the Northern Impoundments.

l. The City of Houston conducted a toxicity study of the Houston Ship Channel including the San Jacinto River published in July 1995. Samples of sediment and fish and crab samples were collected in August 1993 and May 1994 for the study. Sediment samples collected northeast of the Northern Impoundments indicated extremely high dioxin and furan levels. These dioxin and dibenzofuran levels were the highest values recorded in the entire Houston Ship Channel. In addition, fish and crab samples collected northeast of and one mile downstream from the Northern Impoundments also indicated extremely high levels of dioxin and dibenzofuran.

m. In January 2004, The Texas Commission on Environmental Quality ("TCEQ") published a study of the Total Maximum Daily Loads ("TMDLs") for Dioxins in the

Houston Ship Channel. Samples of sediment and fish tissue were collected in the summer of 2002, fall 2002, and spring 2003. The data collected indicated the continued presence of dioxin contamination in the San Jacinto River. In addition, the fish and shellfish tissue samples collected indicated that the health-based standard was exceeded in 97% of fish samples and in 95% of the crab samples. Additional samples in the San Jacinto River surrounding the Site were collected in the spring of 2004 and confirmed the high dioxin concentrations.

n. In 2005 and 2006, EPA conducted a Preliminary Assessment and Screening Investigation to determine if the site was eligible for proposal to the National Priorities List ("NPL"). Site reconnaissance identified the surface water pathway as the primary pathway of concern. Seventeen sediment samples were collected from the San Jacinto River to evaluate background, potential source areas, and possible releases. Samples were analyzed for semivolatile organic compounds, pesticides, polychlorinated biphenyls ("PCBs"), dioxins and furans, and metals. Sediment sample results indicated elevated concentrations of dioxin congeners and furans, including 2,3,7,8-Tetrachlorodibenzo-p-dioxin ("TCDD") and 2,3,7,8 Tetrachlorodibenzofuran ("TCDF"), as well as PCBs. The Northern Impoundments were identified as the source of hazardous substances at the Site. On March 1, 2010, "grayish waste" was reported to have been observed by EPA personnel to be entering the San Jacinto River from the Northern Impoundments during a Site visit.

o. EPA listed the Site on the NPL pursuant to CERCLA § 105, 42 U.S.C. § 9605, on March 19, 2008. EPA is the lead agency for the Site, with the TCEQ as the support agency.

p. In 2009, EPA issued a Unilateral Administrative Order to IPC, as successor to Champion, and MIMC to conduct a Remedial Investigation/Feasibility Study (RI/FS) to determine the extent of the Site contamination. In response to releases of hazardous substances into the San Jacinto River and evidence of recreational use of the Site, EPA also issued a Removal Action Memoranda in April 2010. A Time Critical Removal Action ("TCRA") to address the hazardous substances associated with the Northern impoundments was completed in July 2011 by IPC and MIMC pursuant to the TCRA AOC. The TCRA included the installation of geotextile and geomembrane underlayments in certain areas and a temporary armored cap. The purpose of the temporary cap is to prevent releases of hazardous substances into the river and to prevent exposure from the recreational use of the Northern Impoundments prior to final remedy implementation.

q. Between 2010 and 2013, site-specific data were collected for the RI. The RI included the collection of paper mill waste, sediment, tissue (i.e., hardhead catfish, Gulf killifish, rangia clam, and blue crabs), soil, and groundwater samples for analysis, including analysis for dioxins and furans, PCBs as Aroclors, metals, semivolatile organic compounds, volatile organic compounds, and pesticides. Physical data collected during the RI included: a bathymetric survey; and data regarding current velocity, material [?], [geotechnical properties?], riverbed properties, sediment loading, erosion rates of cohesive sediment, and net sedimentation rates. Solid-phase micro extraction porewater samplers were also evaluated as part of the RI.

r. The RI Report, completed May 23, 2013, contains a detailed discussion of the process involved to identify contaminants of concern ("COCs") and the nature and extent of

contamination (RI Report, Section 5.2 for the area north of I-10 and Section 6.2 for the area south of I-10). Results of the baseline human health risk assessment ("BHHRA") and baseline ecological risk assessment ("BERA"), indicate COCs for the Site include dioxins and furans, in particular TCDD and TCDF, as well as PCBs.

s. After the RI report was completed, in July 2016, surface water samples were collected at seven locations once per week during each of three consecutive weeks. Sampling stations were at five locations previously sampled by the TCEQ's TMDL program from 2002 to 2004, and two new stations. The same methods used by the TMDL program were used in 2016 to enable direct comparisons of current and past conditions. The study was designed to allow this comparison, and to provide information on trends across a large area, including the presence of dioxins and furans in surface waters upstream and downstream of USEPA's preliminary Site perimeter. Results of the 2016 surface water quality study showed that average toxicity equivalent quotient ("TEQ") in the vicinity of the Site remained above the Texas Surface Water Quality Standards ("TSWQS").

t. Chemical analysis, conducted for the HRS Documentation Record, the RI, and in July 2016, confirm that dioxin and dibenzofuran contaminants have entered the San Jacinto River from the Site. Chemical analysis documented the presence of numerous dioxin congeners and furans in sediments. In addition, sediment samples collected within the surface waste ponds indicate that concentrations of hazardous substances are present at levels significantly greater than upstream and downstream background levels [and in concentrations greater than the corresponding by Contract-Required Quantitation Levels?].

u. The Site remedial response is a single operable unit, and all areas and media within the Site are addressed in a single ROD signed October 11, 2017. The overall strategy for addressing contamination at the Site includes excavation and off-site disposal of source materials and contaminated soils above cleanup levels from the impoundments in and adjacent to the San Jacinto River. Institutional Controls will be used to prevent disturbance of certain areas where contamination is left in place that does not allow for unlimited use or unrestricted access (including prohibitions on dredging and anchoring for the Sand Separation Area, and prohibitions on construction and excavation for the Southern Impoundment) and to alert future property owners of subsurface materials exceeding cleanup goals in the Sand Separation Area, and waste and soils in the Southern Impoundment with dioxin concentrations exceeding EPA's protective level of 51 ng/kg for unlimited use and unrestrictive access. Monitored natural recovery will be used to ensure remedy protectiveness in the aquatic environment, including the Sand Separation Area. Additional sampling will be conducted in the Sand Separation Area during the RD to better delineate the extent of contamination in that area.

v. A BHHRA and BERA were conducted to estimate the potential for current/future risk from exposure to contaminants from the Site. The BHHRA and BERA were conducted to determine potential pathways by which people (human receptors) or animals (ecological receptors) could be exposed to upland or aquatic contamination in waste material, sediment, soil, water, or biota; the amount of contamination receptors of concern may be exposed to; and the toxicity of those contaminants if no action were taken to address contamination at the Site. Some of the human health risk determinations subsequently were modified by the EPA based on further risk analysis as documented in memoranda included as

part of the Site administrative record. The risk assessments were conducted on the baseline conditions that existed before the installation of the temporary armored cap over the Northern Impoundments that was completed during the removal action. These assessments are summarized in the ROD and identify the contaminants and exposure pathways that need to be addressed by the remedial action.

w. The BHHRA for the Site, as modified by the EPA, identified non-cancer hazards greater than one for some recreational fisher exposure scenarios (direct exposure to surface areas identified and the ingestion of catfish, clam, or crab from fishing areas identified), for some recreational visitor exposure scenarios (direct exposure to the surface area identified), and for some future construction worker exposure scenarios.

x. The BERA describes the baseline risks to ecological receptors associated with the wastes in the Northern impoundments as the result of exposures to dioxins localized to the immediate vicinity of the Northern Impoundments.

y. 2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) is considered the most toxic of the dioxins and dibenzofurans by the World Health Organization. Non-2,3,7,8-TCDD dioxins and dibenzofurans are usually expressed as a fraction of the toxicity attributed to 2,3,7,8-TCDD.

z. The most common health effect in people exposed to large amounts of dioxins, in particular 2,3,7,8-TCDD, is chloracne. Chloracne cases have typically been the result of accidents or significant contamination events. Chloracne is a skin disease with acne-like lesions that occur mainly on the face and upper body. Other skin effects noted in people exposed to high doses of 2,3,7,8-TCDD include skin rashes, discoloration, and excessive body hair. Changes in blood and urine that may indicate liver damage also are seen in people. Exposure to high concentrations of CDDs may induce long-term alterations in glucose metabolism and subtle changes in hormone levels.

aa. Respondent IPC is a corporation incorporated in the state of New York. IPC is the successor to Champion Papers, Inc. which arranged for disposal or treatment of hazardous substances, which were owned or possessed by said company, at the Site.

bb. Respondent MIMC is a corporation incorporated in the state of Texas. MIMC operated the waste disposal facility at the Site. In addition, MIMC accepted hazardous substances for transport and selected the Site for disposal.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

11. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. The San Jacinto River Waste Pits Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent MIMC was the "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(2) Respondent IPC arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(3) Respondent MIMC accepts, or accepted, hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in ¶10 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

f. The RD required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PERFORMANCE OF THE WORK

13. **Coordination and Supervision**

a. **Project Coordinators**.

(1) Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents' Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify Respondents of EPA's Remedial Project Manager (RPM). EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's RPM will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Respondents' Project Coordinators shall, at EPA's request, meet with EPA's RPM at least monthly.

b. **Supervising Contractor.** Respondents' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

c. **Procedures for Disapproval/Notice to Proceed**

(1) Respondents shall designate, and notify EPA, within 15 days after the

Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.,* experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondents shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

(3) Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 13.c(1) and 13.c(2).

[NOTE: Include ¶ 13.c(4) if EPA has already accepted Respondents' Project Coordinator/Supervising Contractor.]

(4) Notwithstanding the procedures of ¶ 13.c(1) through 13.c(3), Respondents have proposed, and EPA has authorized Respondents to proceed, regarding the following Project Coordinator and Supervising Contractor: [**name and contact information]**.

14. **Performance of Work in Accordance with SOW.** Respondents shall develop the RD in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval

under the Settlement or SOW shall be subject to approval by EPA in accordance with ¶ [**6.5**] (Approval of Deliverables) of the SOW**.**

15. **Emergencies and Releases**. Respondents shall comply with the emergency and release response and reporting requirements under ¶ [**3.9**] (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by EPA), nothing in this Settlement, including ¶ [**3.9**] of the SOW, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Respondents' failure to take appropriate response action under ¶ [**3.9**] of the SOW, EPA takes such action instead, Respondents shall reimburse EPA under Section XII (Payment of Response Costs) for all costs of the response action.

16. **Community Involvement**. I f requested by EPA, Respondents shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section [**2**] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by EPA under this Section constitute Future Response Costs to be reimbursed under Section XII (Payments for Response Costs).

17. **Modification of SOW or Related Deliverables**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to carry out the RD, then EPA may notify Respondents of such modification; provided, however, that any modifications must (1) be consistent with EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A), (2) not eliminate any item in the list of deliverables to be submitted as part of the RD Process or shorten any minimum deadline for submission of any such item, as provided in Section [__] of the SOW, (3) maintain the overall management strategy for completion of the RD, including the use of technical workgroups to collaboratively resolve key RD work elements, as set forth in the SOW; and (4) not modify the list of deliverables in ¶ [__] of the SOW to which stipulated penalties apply under ¶ 48. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIII (Dispute Resolution).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Respondents invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Settlement, and Respondents shall implement all work required by such modification. Respondents shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Settlement.

VIII. PROPERTY REQUIREMENTS

18. Agreements Regarding Access and Non-Interference. Respondents shall, with respect to any Property Owner's Affected Property, use best efforts to secure from such Property Owner an agreement, enforceable by Respondents and the EPA, providing that such Property Owner shall, with respect to its Affected Property provide EPA, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct activities regarding the Settlement, including to the extent applicable, those activities listed in ¶ 18.a (Access Requirements). Respondents shall provide a copy of such access agreement(s) to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 60 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section IX (Access to Information); and

(9) Assessing Respondents' compliance with the Settlement.

19. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely

manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XII (Payment of Response Costs).

20. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

21. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligations to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

22. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

IX. ACCESS TO INFORMATION

23. Respondents shall provide to EPA , upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

24. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 24.b, and except as provided in ¶ 24.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide

the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

25. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

26. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. RECORD RETENTION

27. Until 10 years after EPA provides notice pursuant to ¶ [**3.11**] of the SOW (Notice of Work Completion), that all work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

28. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA , and

except as provided for in ¶ 24 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

29. Each Respondent certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XI. COMPLIANCE WITH OTHER LAWS

30. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

31. **Permits**. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

32. Respondents may seek relief under the provisions of Section XIV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 31 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. PAYMENT OF RESPONSE COSTS

33. **Payments for Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Prepayment of Future Response Costs**. Within 30 days after the Effective Date, Respondents shall pay to EPA $250,000.00 as an initial payment toward Future Response Costs. Respondents shall make payment of this amount in accordance with ¶¶ 34.b and 34.c. The total amount paid shall be deposited by EPA in the San Jacinto River Waste Pits Future Response Costs Special Account.

b. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number 06ZQ and the EPA docket number for this action.

c. At the time of payment, Respondents shall send notice that payment has been made to the EPA RPM and to Susan Jenkins, Financial Management Officer (6MD-C), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 06ZQ and the EPA docket number for this action.

d. **Shortfall Payments**. If after submitting Respondents first bill under ¶ 33.e (Periodic Bills) and the final resolution of any dispute regarding the amount of such bill, the balance in the San Jacinto River Waste Pits Future Response Costs Special Account has fallen below $50,000, EPA shall so notify Respondents and provide an estimate of additional Future Response Costs to be billed to Respondents under this Settlement. Respondents shall, within 30 days after receipt of such notice, pay to EPA the amount of such anticipated Future Response Costs up to but not exceeding $200,000. Payment shall be made in accordance with ¶ ¶ 34.b and 34.c (instructions for Prepaid Future Response Costs payments). The amounts paid shall be deposited by EPA in the San Jacinto River Waste Pits Future Response Costs Special Account.

e. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an unreconciled Standard Cost Accounting Report (SCORPIOS), which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 35 (Contesting Future Response Costs), and in accordance with ¶¶ 34.b and 34.c (instructions for Prepaid Future Response Costs payments).

f. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to ¶ 33.e (Periodic Bills) shall be deposited by EPA in the San Jacinto River Waste Pits Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the San Jacinto River Waste Pits Special Account balance is

sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

g. **Unused Amount**. After EPA issues the Notice of Work Completion pursuant to ¶ [**3.11**] of the SOW and a final accounting of the San Jacinto River Waste Pits Future Response Costs Special Account (including crediting Respondents for any amounts received under ¶¶ 34.b (Prepayment of Future Response Costs), 34.d (Shortfall Payments), or 34.e (Periodic Bills), EPA will, within thirty (30) days, apply any unused amount paid by Respondents pursuant to ¶ 33.b (Prepayment of Future Response Costs) or 34.d (Shortfall Payments) to any other unreimbursed response costs under the TCRA AOC and return the balance to the Respondents.

34. **Interest**. In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on prepaid Future Response Cost shall begin to accrue on the Effective Date. The Interest on all subsequent Future Response Costs shall begin to accrue on the date of the bill or on the date of the prepayment shortfall notice pursuant to ¶ d (Shortfall Payments).] The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XV (Stipulated Penalties).

35. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any Future Response Costs billed under ¶ 34 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the EPA Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in ¶ 34, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 15 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 33. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in ¶ 34. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for

resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XIII. DISPUTE RESOLUTION

36. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

37. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 30 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 20 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

38. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the [Division Director?] level or higher will issue a written decision on the dispute to Respondents. Any decision shall be consistent with the limitations contained in ¶ 17.a. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

39. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 36 (Contesting Future Response Costs), as agreed by EPA.

40. Except as provided in ¶ 50, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XIV. FORCE MAJEURE

41. "Force Majeure" for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to

anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 6, within five (5) days of when Respondents first knew that the event might cause a delay. Within 14 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 41 and whether Respondents have exercised their best efforts under ¶ 41, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

43. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

44. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 41 and 41. If Respondents

carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

45. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XV. STIPULATED PENALTIES

46. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 47.a and 48 for failure to comply with the obligations specified in ¶¶ 47.a and 48, unless excused under Section XIV (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ [**6.5(a)(2)**] of the SOW and ¶ 17.a; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph. For purposes of stipulated penalties, "material defect" means a bad faith lack of effort to submit an acceptable deliverable meeting the requirements of EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A) for designing remedial actions.

47. Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 47.b:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$3,500	31st day and beyond

b. **Obligations**

(1) Payment of any amount due under Section XII (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 35 (Contesting Future Response Costs).

(4) Submission of each of the following deliverables: the Remedial Design Work Plan, the Preliminary Design Investigation Evaluation Report, the Treatability Study Evaluation Report (if required), the Preliminary Remedial Design, , the Pre-Final Remedial Design, the Final Remedial Design, and the Remedial Action Work Plan.

48. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables listed in ¶ [__] – of the SOW other than those specified in ¶ 47.b:

Penalty Per Violation Per Day	**Period of Noncompliance**
$250	1st through 14th day
$500	15th through 30th day
$1,000	31st day and beyond

49. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 63 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $50,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 60 (Work Takeover) and 82 (Access to Financial Assurance).

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ [**6.5**] (Approval of Deliverables) of the SOW, during the period, if any, beginning on EPA's receipt of such submission until 30 days after EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

51. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

52. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 33 (Payments for Future Response Costs).

53. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 51 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 52 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

54. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

55. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 60 (Work Takeover).

56. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVI. COVENANTS BY EPA

57. Except as provided in Section XVII (Reservation of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations

under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XVII. RESERVATIONS OF RIGHTS BY EPA

58. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

59. The covenants set forth in Section XVI (Covenants by EPA) above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

60. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an

endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 61.a Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 60.b. Funding of Work Takeover costs is addressed under ¶ 82 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in ¶ 38 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 60.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 60.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 38 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XVIII. COVENANTS BY RESPONDENTS

61. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work and Future Response Costs, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work and Future Response Costs;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

62. Except as expressly provided in Section XVI (Covenants by EPA), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVII (Reservations of Rights by EPA), other than in ¶ 59.a (liability for failure to meet a requirement of the Settlement), 59.d (criminal liability), or 59.e (violations of federal/state law during or after

implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

63. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S. C. § 9611, or 40 C.F.R. § 300.700(d).

64. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

XIX. OTHER CLAIMS

65. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

66. Except as expressly provided in ¶ Section XVI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

67. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

68. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response

costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

69. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work and Future Response Costs.

70. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

71. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

72. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVI (Covenants by EPA).

XXI. INDEMNIFICATION

73. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including, but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents,

contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

74. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

75. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of, any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXII. INSURANCE

76. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to ¶ [**3.11**] of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the San Jacinto River Waste Pits Site, Harris County, Texas, and the EPA docket number for this action.

XXIII. FINANCIAL ASSURANCE

77. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of $1,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency; or

e. A demonstration by a Respondent that it meets the financial test criteria of ¶ 79, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover.

78. [**If the case team and Respondents have pre-negotiated the form of the financial assurance, use this text**: Respondents have selected, and EPA has found satisfactory, a [**insert type**] as an initial form of financial assurance. Within 30 days after the Effective Date,] [**Otherwise use this text:** Respondents shall, within 20 days of the Effective Date, request EPA's approval of the form of Respondents' financial assurance. Within 30 days of such approval,] Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer at the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202 .

79. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 79.e, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) The affected Respondent has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter

from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

80. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 79.e must also:

a. Annually resubmit the documents described in ¶ 79.b within 90 days after the close of the affected Respondent's fiscal year;

b. Notify EPA within 30 days after the affected Respondent determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent in addition to those specified in ¶ 79.b; EPA may make such a request at any time based on a belief that the affected Respondent may no longer meet the financial test requirements of this Section.

81. If a Respondent becomes aware of any information indicating that its financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 83 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

82. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 60.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 82.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the

cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 82.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 60.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 79.e, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 60 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 82 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the San Jacinto River Waste Pits Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 824 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

83. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 78, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 78.

84. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under ¶ [**3.11**] of the SOW; (b) in

accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII (Dispute Resolution).

XXIV. INTEGRATION/APPENDICES

85. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

a. Appendix A is the ROD.

b. Appendix B is the SOW.

c. Appendix C is the description and/or map of the Site.

d. "Appendix D" is the complete list of Respondents..

XXV. MODIFICATION

86. The EPA Project Coordinator may, subject to the limitations in ¶ 17.a, modify any plan, schedule, or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

87. If Respondents seek permission to deviate from any approved work plan, schedule, or SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 86.

88. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVI. EFFECTIVE DATE

89. This Settlement shall be effective 15 days after the Settlement is signed by the Regional Administrator or his/her designee.

IT IS SO AGREED AND ORDERED;

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Dated [Name]
Regional Administrator (or designee/delegatee), Region __

Signature Page for Settlement regarding the _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____ _____
Dated [Name]
[Title]
[Company]
[Address]

[NOTE: A separate signature page is required for each settlor.]